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JOINT STATUS REPORT

November 21, 2011

Via ECF

Hon. Andrew L. Carter, Jr., U.S.M.J.
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: *Patricia Paris-Absalom v. Aetna Life Insurance Company*
Civil Action No.: CV-11-0610(RRM)(ALC)
Our File No.: 00322-008138

Dear Judge Carter:

Pursuant to this Court's Order dated November 3, 2011, the parties submit this Joint Status Report indicating that there is an issue regarding discovery outside the administrative record. Specifically, the plaintiff, Patricia Paris-Absalom, is seeking responses to her request for interrogatories served on the defendant Aetna Life Insurance Company ("Aetna") on October 31, 2011. In addition, plaintiff has also noticed a single deposition of the person most qualified to testify on behalf of the defendant as to the reasons for the denial, and how the defendant determined that the wage rates of the positions it alleges were within the plaintiff's experience, skill and capacity satisfied the wage replacement standards of the Plan. The only other evidence the plaintiff intends to adduce which is outside of the administrative record would be from the plaintiff herself.

The defendant does not seek any evidence outside the administrative record. In addition, while the defendant will provide responses to the plaintiff's interrogatories by November 30, 2011, which is the date they are due, it objects to the plaintiff's request for a deposition of an Aetna representative, and also objects to any extra-record evidence the plaintiff intends on submitting to the Court. First, the areas on which the plaintiff seeks discovery are fully explained in the administrative record and accordingly, no further discovery is required. Second, the plaintiff has improperly failed to establish or even identify any "good cause" for the requested discovery she is seeking outside the administrative record. *Hobson v. Metropolitan Life Ins. Co.*, 574 F.3d 75, 83 (2d Cir. 2009). Third, the testimony that the plaintiff is seeking to obtain from the

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deposition of an Aetna representative is the type of extra record evidence that is impermissible in this ERISA §502(a)(1)(B) claim for LTD benefits. *See Magee v. Metropolitan Life Ins. Co.*, No. 07-cv-88169(WHP), 2009 WL 3682423, *2 (S.D.N.Y. Oct. 15, 2009); *Salute v. Aetna Life Ins Co.*, No. 04 CV 2035(TCP)(MLO), 2005 WL 1962254, *6 (E.D.N.Y. Aug. 9, 2005); *Bergquist v. Aetna U.S. Healthcare*, 289 F. Supp. 2d 400, 410 (S.D.N.Y. 2003). Fourth, while plaintiff's counsel indicated that he intends on supplementing the administrative record with information from the plaintiff herself, he has not specifically identified the extra-record evidence he wishes to submit, nor has indicated why such extra-record evidence would be appropriate in this ERISA §502(a)(1)(B) claim for LTD benefits.

Pursuant to its November 3, 2011 Order, the Court will order a briefing schedule to resolve the parties' above-referenced discovery dispute. The parties assume that the Court will direct plaintiff to move since she is the party seeking an order for discovery beyond the record, followed by a responsive brief by defendant and a reply from plaintiff. Plaintiff's counsel advises the Court that he will be in trial commencing December 6, 2011 before the United States District Court for the District of Nevada. That trial is expected to consume two weeks. Therefore, Plaintiff requests a briefing schedule such that the opening brief would not be due until on or after December 22, 2011.

Thank you for your consideration of this matter. Respectfully submitted by:

s/

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